

REMARKS

Summary of the Amendment

Upon entry of the above amendment, the specification and claims 1, 24-26 and 39 will have been amended. Accordingly, claims 1-117 will be pending with claims 41-92 and 102-117 being withdrawn and with claims 1, 39 and 93 being in independent form.

Summary of the Official Action

In the instant Office Action, the Examiner reiterated the Restriction Requirement, withdrew claims 41-92 and 102-117, and made the Restriction Requirement final. The Examiner also objected to the specification on the basis of asserted informalities. The Examiner also rejected claims 30, 31 and 35 as indefinite. Finally, the Examiner rejected claims 1-40 and 93-101 over the art of record. Applicant submits that the objections and rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Restriction Requirement

The Examiner reiterated the previous restriction requirement, withdrew claims 41-92 and 102-117 from examination, and made the restriction requirement final. Applicant traverses the Restriction Requirement for the reasons already made of record. Furthermore, Applicant requests rejoinder of at least withdrawn claims 41-73 upon allowance of the non-withdrawn claims.

Objection to the Specification, is improper and/or moot

Applicant submits that the objection to the specification, with regard to the noted informalities, is improper and moot.

With regard to the assertion that the title is not descriptive, Applicant respectfully disagrees and submits that the title is properly descriptive of the claimed invention. Applicant notes that the Examiner has not explained how or why the title is believed to be non-descriptive.

With regard to the assertion that the status of the provisional application is not reflected in the specification, Applicant submits that this basis of objection is moot because the specification has been amended to so clarify the status of the provisional.

Accordingly, Applicant respectfully requests that the above-noted objection be withdrawn.

Traversal of Rejection Under 35 U.S.C. § 112, 2nd Paragraph

Applicant submits that the rejection of claims 30, 31 and 35 as being indefinite is improper.

The Examiner identifies certain features asserted to lack proper antecedent basis. The Examiner's assertions are incorrect. The noted features are not preceded with the terms "the" or "said", and therefore cannot lack proper antecedent basis. Furthermore, it is clear from a fair reading of the claims that one having ordinary skill in the art would have no difficulty understanding the claim features, and the Examiner has not demonstrated otherwise.

For example, the terms "one first chamber" and "one second chamber" of claim 30 mean what they say, i.e., claim 30 limits the first and second chambers of claim 1 to only one first chamber and one second chamber. Claims 31 and 35 are similarly clear.

Accordingly, Applicant respectfully requests that the above-noted rejection be withdrawn.

Traversal of Rejections Under 35 U.S.C. § 102

Over Finkelshtain

Applicant traverses the rejection of claims 1-15, 17-19 and 29-35 under 35 U.S.C. § 102(e) as being clearly anticipated by US Patent Application Publication No. 2003/0099876 to FINKELSHTAIN et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening, as recited in independent claim 1.

Applicant acknowledges that FINKELSHTAIN discloses a fuel cell which utilizes a cathode 14 that is exposed to atmospheric oxygen (see paragraph [0027]). However, it is clear from the drawings that FINKELSHTAIN does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of FINKELSHTAIN.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document

relied upon does not do so, then the rejection must be withdrawn.

Because FINKELSHTAIN fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(e).

Over Thellmann

Applicant traverses the rejection of claims 1 and 7 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 3,365,334 to THELLMANN.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening, as recited in independent claim 1.

Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44). However, the Examiner is not correct

that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of THELLMANN.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because THELLMANN fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Over Vielstich

Applicant traverses the rejection of claims 1, 5 and 7 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 3,365,333 to VIELSTICH et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening, as recited in independent claim 1.

Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of VIELSTICH.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because VIELSTICH fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Over Shimizu

Applicant traverses the rejection of claims 1, 5, 7, 39 and 93 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 4,562,123 to SHIMIZU et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one sealable opening, as recited in independent claim 1; inter alia, a cartridge, wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid from and/or to the cartridge via the sealable openings, as recited in independent claim 39; and inter alia, that said first chamber has a first liquid transfer port and a second liquid transfer port, said first and second ports being normally closed, as recited in independent claim 93.

Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at

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least one of receive fresh liquid and discharge spent liquid via at least one sealable opening (claim 1). Furthermore, SHIMIZU is silent with regard to a cartridge, wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid from and/or to the cartridge via the sealable openings (claim 39). Finally, SHIMIZU is silent with regard to a first chamber having a first liquid transfer port and a second liquid transfer port, said first and second ports being normally closed (claim 93).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of SHIMIZU.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because SHIMIZU fails to disclose at least the above mentioned features as recited in independent claims 1, 39 and 93, Applicant submits that this document does not disclose all the claimed features recited in at least independent claims 1, 39 and 93.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Traversal of Rejections Under 35 U.S.C. § 103(a)

Over Finkelshstein with Ricks

Applicant respectfully traverses the rejection of claims 24-28, 36, 39, 40 and 93-101 under 35 U.S.C. § 103(a) as unpatentable over FINKELSHTAIN in view of US Patent Application Publication No. 2004/0175599 to RICKS et al.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

In addition to the arguments noted above regarding FINKELSHTAIN, Applicant submits that this rejection is improper because FINKELSHTAIN is not available prior art against the instant application on the basis of 35 U.S.C. § 103(c). The Examiner's attention is directed to MPEP 2146.

As the Examiner knows, the instant Application claims the benefit of the provisional filing date of March 11, 2003 and FINKELSHTAIN is therefore a 35 U.S.C. § 102(e) reference. Furthermore, both the instant application and the FINKELSHTAIN patent application were commonly owned (by More Energy LTD) at the time that the instant application was filed. Accordingly, pursuant to 35 U.S.C. § 103(c) and MPEP 2146, Applicant submits that the instant rejection is improper under 35 U.S.C. § 103(a).

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

Over Finkelshstein alone

Applicant respectfully traverses the rejection of claims 15 and 16 under 35 U.S.C. § 103(a) as

unpatentable over FINKELSHTAIN alone.

The Examiner asserts that a fair modification of the teachings of this document discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

In addition to the arguments noted above regarding FINKELSHTAIN, Applicant submits that this rejection is improper because FINKELSHTAIN is not available prior art against the instant application on the basis of 35 U.S.C. § 103(c). The Examiner's attention is directed to MPEP 2146.

As the Examiner knows, the instant Application claims the benefit of the provisional filing date of March 11, 2003 and FINKELSHTAIN is therefore a 35 U.S.C. § 102(e) reference. Furthermore, both the instant application and the FINKELSHTAIN patent application were commonly owned (by More Energy LTD) at the time that the instant application was filed. Accordingly, pursuant to 35 U.S.C. § 103(c) and MPEP 2146, Applicant submits that the instant rejection is improper under 35 U.S.C. § 103(a).

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

Over Finkelshtain with Finelli

Applicant respectfully traverses the rejection of claims 20 and 21 under 35 U.S.C. § 103(a) as unpatentable over FINKELSHTAIN in view of US Patent No. 3,880,809 to FINELLI.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

In addition to the arguments noted above regarding FINKELSHTAIN, Applicant submits that

this rejection is improper because FINKELSHTAIN is not available prior art against the instant application on the basis of 35 U.S.C. § 103(c). The Examiner's attention is directed to MPEP 2146.

As the Examiner knows, the instant Application claims the benefit of the provisional filing date of March 11, 2003 and FINKELSHTAIN is therefore a 35 U.S.C. § 102(e) reference. Furthermore, both the instant application and the FINKELSHTAIN patent application were commonly owned (by More Energy LTD) at the time that the instant application was filed. Accordingly, pursuant to 35 U.S.C. § 103(c) and MPEP 2146, Applicant submits that the instant rejection is improper under 35 U.S.C. § 103(a).

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

Over Finkelshstain with Delfino

Applicant respectfully traverses the rejection of claims 22 and 23 under 35 U.S.C. § 103(a) as unpatentable over FINKELSHTAIN in view of US Patent No. 3,288,644 to DELFINO.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

In addition to the arguments noted above regarding FINKELSHTAIN, Applicant submits that this rejection is improper because FINKELSHTAIN is not available prior art against the instant application on the basis of 35 U.S.C. § 103(c). The Examiner's attention is directed to MPEP 2146.

As the Examiner knows, the instant Application claims the benefit of the provisional filing date of March 11, 2003 and FINKELSHTAIN is therefore a 35 U.S.C. § 102(e) reference.

Furthermore, both the instant application and the FINKELSHTAIN patent application were commonly owned (by More Energy LTD) at the time that the instant application was filed. Accordingly, pursuant to 35 U.S.C. § 103(c) and MPEP 2146, Applicant submits that the instant rejection is improper under 35 U.S.C. § 103(a).

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

Over Finkelshtain with Reiser

Applicant respectfully traverses the rejection of claims 37 and 38 under 35 U.S.C. § 103(a) as unpatentable over FINKELSHTAIN in view of US Patent Application Publication No. 2003/0207162 to REISER.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

In addition to the arguments noted above regarding FINKELSHTAIN, Applicant submits that this rejection is improper because FINKELSHTAIN is not available prior art against the instant application on the basis of 35 U.S.C. § 103(c). The Examiner's attention is directed to MPEP 2146.

As the Examiner knows, the instant Application claims the benefit of the provisional filing date of March 11, 2003 and FINKELSHTAIN is therefore a 35 U.S.C. § 102(e) reference. Furthermore, both the instant application and the FINKELSHTAIN patent application were commonly owned (by More Energy LTD) at the time that the instant application was filed. Accordingly, pursuant to 35 U.S.C. § 103(c) and MPEP 2146, Applicant submits that the instant

rejection is improper under 35 U.S.C. § 103(a).

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

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Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
G. FINKELSHTAIN et al.

A handwritten signature in black ink, appearing to read 'Neil F. Greenblum', written over a horizontal line.

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